

REMARKS

A check for \$1,620 for the requisite fee for a three-month extension of time (\$1,020) and the fee for three excess independent claims (\$600) accompanies this response. Any fees that may be due in connection with the filing of this paper or with this application may be charged to Deposit Account No. 06-1050. If a Petition for extension of time is needed, this paper is to be considered such Petition.

An Information Disclosure Statement is submitted under separate cover. Further to this Statement and in accord with the duty of disclosure, the Examiner's attention is directed to co-pending U.S. Application Ser. No. 08/484,487, U.S. Pat. No. 5,686,596 and U.S. Application Ser. No. 09/277,405.

The specification is amended to correct obvious typographical and spelling errors. The specification also is amended to add inadvertently omitted reference numbers to clearly identify sequences within the specification. The Examiner indicated in the Office Action that the specification contains instances in which sequences are not accompanied by sequence identification numbers. The sequences in question are provided in the sequence listing and the specification is amended herein to add the appropriate sequence identification numbers.

Claims 9-11, 18 and 26-41 are pending. Claims 1-8, 12-17 and 19 are cancelled herein without prejudice or disclaimer. Claims 26-41 are added herein. Claims 9-11 and 18 are amended herein. Claims 9-11 are amended herein to be in independent form including all of the limitations of base claim 1. Claim 18 is amended to more distinctly claim the subject matter. Claim 18 is further amended to correct an obvious typographical error. Basis for added claims 26, 27, 29, 30, 32 and 33 can be found throughout the specification (for example, see page 29, lines 10-21. Basis for added claims 28 and 31 is found throughout the specification (for example, see original claim 18). Basis for added claims 34-41 is found throughout the specification (for example, see page 7, line 10 through page 8, line 7).

No new matter is added. As amended, eleven independent and nine dependent claims are pending. Because the fee for a total of eight independent claims was originally paid, a fee of \$600 for an additional three independent claims should be due.

REJECTION OF CLAIMS 1-4, 7, 8 AND 12-19 UNDER 35 U.S.C. § 112, FIRST PARAGRAPH

Claims 1-4, 7, 8 and 12-19 are rejected under 35 U.S.C. § 112, first paragraph, as containing subject matter that was not described in the specification in such a way as to reasonably convey to one of skill in the art that the inventor(s) had possession of the invention at the time that the application was filed. The Examiner alleges that the disclosure does not provide a representative number of species to show applicant was in possession of the claimed genus.

Without acquiescing to the Examiner's rejection and solely to expedite prosecution, claims 1-4, 7, 8, and 12-19 are cancelled herein. Thus, the rejection is now moot.

REJECTION OF CLAIMS 5 AND 6 UNDER 35 U.S.C. § 112, FIRST PARAGRAPH

Claims 5 and 6 are rejected under 35 U.S.C. § 112, first paragraph, as containing subject matter that was not described in the specification in such a way as to reasonably convey to one of skill in the art that the inventor(s) had possession of the invention at the time that the application was filed. The Examiner alleges that, because the claims recite specific plasmids deposited at ATCC as accession numbers 97906 and 97862, these plasmids must be obtainable by a repeated method or otherwise available to the public. The Examiner alleges that "others apparently deposited the plasmids" and thus contends that applicant must deposit the specific plasmids recited in the claims to satisfy the deposit requirement under 37 CFR 1.801-1.809.

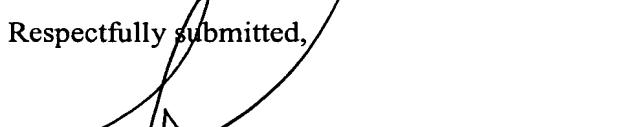
In order to advance the application to allowance, claims 5 and 6 are cancelled herein rendering the rejection moot. Notwithstanding this, it is respectfully submitted that there is no evidence of record that the plasmids deposited at ATCC as accession numbers 97906 and 97862 were deposited by others.

OBJECTION TO CLAIMS 9-11

Claims 9-11 are objected to as being dependent upon a rejected base claim, but are deemed allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. To expedite prosecution, claims 9-11 have been rewritten in independent form. Applicant respectfully submits that the objection is obviated by the amendment of claim 9-11 herein.

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In view of the above, entry of the amendment and allowance of the application are respectfully requested.

Respectfully submitted,

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